

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 769/DEL/2015
[A.Y 2006-07]

M/s BPTP Resort Pvt Ltd
[Formerly known as M/s Real Value
Overseas Pvt Ltd, M-11,
Middle Circle, Connaught Circus
New Delhi

Vs.

The A.C.I.T
Central Circle - 23
New Delhi

PAN: AAACR 5360 H

[Appellant]

[Respondent]

Assessee by : Shri Ajay Bhagwani, CA

Revenue by : Shri Satpal Gulati, CIT-DR

Date of Hearing : 27.07.2021

Date of Pronouncement : 27.07.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
CIT(A) - XXXIII, New Delhi dated 31.10.2014 pertaining to A.Y 2006-07.

2. The substantives grievances argued by the ld. counsel for the assessee before us are:

i) The ld. CIT(A) erred in holding that wherever the date of PDCs are extended, interest is to be taken to have been paid @ 15% p.a. in cash outside the books of account and is to be treated as undisclosed income.

ii) The ld. CIT(A) erred in sustaining the disallowance of Rs. 7,24,112/- u/s 40A(3) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] despite the fact that no deduction in respect of the said sum was claimed in the computation of income from business.

In addition to the aforementioned grievances, the ld. counsel for the assessee also vehemently stated that the material seized during the course of search on BPTP group of cases on 15.11.2007 did not belong to the assessee,

3. Briefly stated, the facts of the case are that the appellant is a group company, BPTP Ltd, which is the flagship company engaged in the business of real estate development. Search was conducted on BPTP Ltd on 07.12.2010 including the assessee. Pursuant to search, notice u/s 153A was served upon the assessee in response to which, return of income was filed on 30.01.2012. Assessment was completed by making following additions:

i)	On account of interest on PDC	Rs. 35,34,286/-
ii)	Disallowance u/s 37(1) on addl payment	Rs. 24,14,681/-
iii)	Disallowance u/s 40A(3) of the Act	Rs. 7,24,112/-

4. Assessment was assailed before the Id. CIT(A) and the Id. CIT(A), vide order dated 31.10.2014, gave relief as under:

i)	on account of interest on PDC	Rs. 33,65,536/-
ii)	disallowance u/s 37(1) on addl payment	Rs. 24,14,681/-

5. The present appeal relates to the addition on account of interest on PDC Rs. 1,68,750/- and disallowance u/s 40A(3) of the Act 7,24,112/-.

6. Before us, the ld. counsel for the assessee stated that there were two searches on BPTP group - one on 15.11.2007 and another on 07.12.2010. It is the say of the ld. counsel for the assessee that there was no search on the assessee company on 15.11.2007 and on subsequent search on 07.12.2010 also no incriminating material was found and seized which belonged to the assessee.

7. The ld. counsel for the assessee further stated that as no incriminating material was found and seized belonging to the assessee during the course of search on 07.12.2010, no addition should have been made in the assessment completed u/s 153A of the Act.

8. Strong reliance was placed on the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 61 Taxmann.com 412 and Meeta Gutgutia 395 ITR 526. The ld. counsel for the assessee further relied upon the decision of this Tribunal in the case of Green Valley Housing and Land Development 1340/DEL/2015 and in the case of Green Valley Tower Pvt Ltd ITA No.1354/DEL/2015.

9. The ld. DR fairly conceded that no incriminating material was found during the course of search proceedings and decisions relied upon by the ld. counsel for the assessee are in favour of the assessee and against the Revenue.

10. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that no incriminating material was found during the course of search proceedings. On identical facts, this Tribunal in ITA No. 1340/DEL/2015 has held as under:

"6. This assessment is framed u/s 153C/153[A of the Act](#). The law is settled that the concluded assessment can only be disturbed when there is some incriminating material found at the time of search and the same is referred to while framing assessment u/s 153C/153[A of the Act](#). For this proposition, we draw support from the judgment of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573 [DEL] wherein the Hon'ble High Court summarized a legal position in para 37 of the order wherein it was explicitly held that an assessment u/s 153[A of the Act](#) has to be made only on the basis of seized material.

7. Since similar additions have been made by the Assessing Officer which were made while framing assessment u/s 143(3) of the Act and deleted by the Tribunal, the present assessment becomes void

for want of incriminating material. We, accordingly, set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the addition of Rs. 1.10 lakhs.

11. Similar view was taken by this Tribunal in ITA No, 1354/DEL/2015. Relevant findings read as under:

"3. The briefly stated the facts of the case are that a search and seizure operation was carried at the business premises as well as the residential premises of M/s. BPTP Group of cases on 07.12.2010. Copy of a sale deed dated 17.03.2005 was found which was between Sh. Rajan and the assessee for a piece of land at Kheri Kalam Farida for a consideration of Rs. 43,00,000/-.

4. The Assessing Officer was of the firm believe that since the impound provisions of section 153C of the Act squarely applied and accordingly issued and served notice u/s. 153A of the Act. Following additions were made a addition on account of interest on PDC addition on account of disallowance u/s. 40 A(3) of the Act.

5. As mentioned elsewhere the date of search is 07.12.2010 and assessment in the case of the assessee has complied u/s. 143 (3) of the Act vide order dated 30.12.2009. This means that on the date of the search assessment year 2007-08 stood concluded and

therefore, if the Assessing Officer wanted to assess u/s. 153 C r/w 153 A of the Act. He could only make the assessment only on the basis of some incriminating material found at the time of the search. The Assessing Officer cannot disturb a concluded assessment without there being any reference to any ITA No.1354 /Del/2015 3 incriminating material against the assessee. For this proposition we draw support from the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573.

6. Since no incriminating material has been referred in the assessment order framed u/s. 153 C/ 153 A of the Act. The entire assessment is avoidab-initio. Moreover a perusal of the assessment so framed show that the Assessing Officer has made the same additions which were made in the assessment framed u/s 143 (3) of the Act vide order dated 30.12.2009."

12. As no distinguishing decision has been brought to our notice in favour of the Revenue, respectfully following the findings of the co-ordinate bench, we hold that the entire assessment is void ab initio and, therefore, we do not find any reason to dwell into the merits of the addition.

13. In the result the appeal of the assessee in ITA No. 769/DEL/2015 is allowed.

The order is pronounced in the open court in the presence of both the rival representative on 27.07.2021.

Sd/-

[K.N. CHARY]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 27th July, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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